PATENT

Atty Docket No.: 10006299-1
App. Ser. No.: 09/854,580

REMARKS

Favorable reconsideration of this application is respectfully requested in view of the amendments above and the following remarks. By virtue of the claim amendments, Claims 1, 6, 8, 14, 15, 20, 21, and 25 have been amended and Claims 27-29 have been added. In addition, Claims 22-24 have been canceled without prejudice or disclaimer of the subject matter contained therein. Therefore, Claims 1-4, 6-12, 14-18, 20, 21, and 25-29 are currently pending in the present application, of which Claims 1, 8, 15, and 21 are independent.

No new matter has been introduced by way of the claim amendments or additions; entry thereof is therefore respectfully requested.

Claim Rejection Under 35 U.S.C. §102

The test for determining if a reference anticipates a claim, for purposes of a rejection under 35 U.S.C. § 102, is whether the reference discloses all the elements of the claimed combination, or the mechanical equivalents thereof functioning in substantially the same way to produce substantially the same results. As noted by the Court of Appeals for the Federal Circuit in *Lindemann Maschinenfabrick GmbH v. American Hoist and Derrick Co.*, 221 USPQ 481, 485 (Fed. Cir. 1984), in evaluating the sufficiency of an anticipation rejection under 35 U.S.C. § 102, the Court stated:

> Anticipation requires the presence in a single prior art reference disclosure of each and every element of the claimed invention, arranged as in the claim.

Therefore, if the cited reference does not disclose each and every element of the claimed invention, then the cited reference fails to anticipate the claimed invention and, thus, the claimed invention is distinguishable over the cited reference.

Claims 1, 8, 15, and 21 have been rejected under 35 U.S.C. §102(e) as allegedly being anticipated by the disclosure contained in U.S. Patent No. 6,292,574 to Shildkraut et al. This rejection is respectfully traversed because the claimed invention as set forth in Claims 1, 8, 15, and 21 are patentably distinguishable over the disclosure contained in the Shildkraut et al. document.

Claims 1, 8, 15, and 21, as amended, recite in various forms, *inter alia*, that at least one of lightness levels, contrast levels, and color levels, is measured and that an appearance of an image is enhanced by changing at least one of these levels based upon the measured level. Support for this amendment to Claims 1, 8, 15, and 21 may be found at least on page 5, lines 9-12 of the Specification where modifications to the appearance of the image are described as being performed so that the image may have preferred appearances. It is respectfully submitted that Shildkraut et al. fails to disclose at these features.

Instead, Shildkraut et al. discloses a computer program product for detecting eye color defects that locates pixels with color characteristics of redeye defects and corrects the color of those pixels based on the location of the detected redeye defect. Abstract. As such, Shildkraut et al. does not disclose that at least one of lightness levels, contrast levels, and color levels of human faces are automatically measured and that an appearance of the image is automatically enhanced by changing at least one of the lightness levels, contrast levels, and color levels of the image.

At least by virtue of the lack of disclosure of these elements, Shildkraut et al. fails to meet the requirements of anticipation as described hereinabove. Accordingly, Shildkraut et al. cannot anticipate Claims 1, 8, 15 and 21. The Examiner is therefore respectfully requested to withdraw the rejection of Claims 1, 8, 15 and 21. Moreover, the Examiner is respectfully

requested to provide an indication that Claims 1, 8, 15 and 21 and the claims that depend therefrom are allowable over the disclosure contained in Shildkraut et al.

Claim Rejection Under 35 U.S.C. §103

The test for determining if a claim is rendered obvious by one or more references for purposes of a rejection under 35 U.S.C. § 103 is set forth in MPEP § 706.02(j):

> To establish a *prima facie* case of obviousness, three basic criteria must be met. First, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings. Second, there must be a reasonable expectation of success. Finally, the prior art reference (or references when combined) must teach or suggest all the claim limitations. The teaching or suggestion to make the claimed combination and the reasonable expectation of success must both be found in the prior art and not based on applicant's disclosure. *In re Vaeck*, 947 F.2d 488, 20 USPQ2d 1438 (Fed. Cir. 1991).

Therefore, if the above-identified criteria are not met, then the cited reference(s) fails to render obvious the claimed invention and, thus, the claimed invention is distinguishable over the cited reference(s).

Shildkraut et al. in view of Surve et al.

The Official Action sets forth a rejection of Claims 2-4, 9-12, 16-18 and 22-24 under 35 U.S.C. §103(a) as allegedly being unpatentable over the disclosure contained in Shildkraut et al. in view of U.S. Patent No. 6,591,008 to Surve et al. This rejection is respectfully traversed because Shildkraut et al. considered singly or in combination with Surve et al. fails to disclose all of the elements of Claims 2-4, 9-12, 16-18 and 22-24.

As set forth hereinabove, Shildkraut et al. fails to disclose all of the elements of the independent Claims 1, 8, 15, and 21. For instance, Shildkraut et al. fails to disclose that at

least one of the lightness levels, contrast levels, and color levels of human faces are detected and that at least one of these levels is changed based upon the measured level.

The Official Action relies upon Surve et al. for its disclosure of a color content adjustment section 50, a contrast content adjustment section 60, and a spatial content adjustment section 70 depicted in Figure 1. Surve et al. pertains to a method for displaying a digital color image to a visually impaired person by measuring the response of the person and specifying a set of enhancement profiles relating to the persons responses. Abstract. In this regard, Surve et al. discloses that in Figures 3-5 various steps that are performed to adjust the color content, contrast content, and spatial frequency content of an image. Surve et al., however, fails to disclose that the steps performed in Figures 3-5 are performed using face detection algorithms as set forth in independent Claims 1, 8, 15, and 21 of the present invention.

Therefore, Surve et al. fails to disclose that at least one of lightness levels, contrast levels, and color levels of human faces are measured as claimed in Claims 1 and 15. Likewise, Surve et al. fails to disclose a module or means for measuring at least one of lightness levels, contrast levels, and color levels as claimed in Claims 8 and 21. In addition, Surve et al. fails to disclose that an appearance of the image is changed based upon the measured at least one of the lightness levels, contrast levels, and color levels of the human faces in the image. As such, Surve et al. fails to make up for the deficiencies in Shildkraut et al. described above.

In this regard, even assuming for the sake of argument that it would have been obvious to one of ordinary skill in the art to modify Shildkraut et al. based upon the disclosure contained in Surve et al. as alleged in the Official Action, the proposed combination would still fail to yield the present invention as claimed in independent Claims

1, 8, 15, and 21 and the claims that depend therefrom. More particularly, for instance, the proposed combination would still fail to teach or disclose that at least one of lightness levels, contrast levels, and color levels of human faces are measured and that at least one of the levels is changed based upon the measured level.

At least by virtue of the failure in Shildkraut et al. and Surve et al. to teach or suggest the above identified element of independent Claims 1, 8, 15, and 21, a *prima facie* case of obviousness has not been established under 35 U.S.C. § 103. Accordingly, the Examiner is respectfully requested to withdraw the rejection of Claims 2-4, 9-12, 16-18 and 22-24 at least by virtue of their respective dependencies upon allowable Claims 1, 8, 15, and 21.

Shildkraut et al. in view of Surve et al. and Acker et al.

The Official Action sets forth a rejection of Claims 6, 14, 20 and 25 under 35 U.S.C. §103(a) as allegedly being unpatentable over the disclosure contained in Shildkraut et al. in view of Surve et al. and U.S. Patent No. 6,009,209 to Acker et al. This rejection is respectfully traversed because Shildkraut et al. considered singly or in combination with Surve et al. and Acker et al. fails to disclose all of the elements of Claims 6, 14, 20 and 25.

The Official Action relies upon the disclosure contained in Acker et al. for its alleged disclosure of "a module for automatically determining if there exists a red eye artifact." This allegation is improper because Acker et al. states that "***[a]fter the area of the red eye effect is identified by the user in the source image***, the apparatus and method of the invention identifies and stores in a memory of the computer system attributes of the discoloration causing the red eye effect." (emphasis added) (column 2, lines 8-12). Clearly, Acker et al. discloses that a user identifies the area of the red eye effect. Therefore, the argument

presented in the Official Action that Acker et al. discloses "a module for automatically determining if there exists a red eye artifact" is invalid and erroneous.

In addition, at least by virtue of the failure in Acker et al. to disclose the elements as described hereinabove, the proposed modification of Shildkraut et al. with the disclosures of Surve et al. and Acker et al. would still fail to yield all of the elements of the present invention as set forth in Claims 1, 8, 15, and 21. Therefore, even assuming for the sake of argument that the proposed modification of Shildkraut et al. as set forth in the Official Action were proper, the proposed modification would still fall short of setting forth a *prima facie* case of obviousness. Accordingly, the Examiner is respectfully requested to withdraw the rejection of Claims 6, 14, 20 and 25.

Shildkraut et al. in view of Surve et al. and Fowler

The Official Action sets forth a rejection of Claims 7 and 26 under 35 U.S.C. §103(a) as allegedly being unpatentable over the disclosure contained in Shildkraut et al. in view of Surve et al. and U.S. Patent No. 5,410,618 to Fowler. This rejection is respectfully traversed because Shildkraut et al. considered singly or in combination with Surve et al. and Fowler fails to disclose all of the elements of independent Claims 1 and 21.

As set forth hereinabove, Shildkraut et al. fails to disclose all of the elements of the independent Claims 1 and 21. In addition, the Official Action does not rely upon the either of the disclosures contained in Surve et al. or Fowler to make up for these deficiencies in Shildkraut et al. Instead, the Official Action asserts that Fowler discloses using a mapping technique to produce the image with target levels for a mean value or a variation value as set forth in Claims 7 and 26. Although the Applicants disagree with this assertion, nevertheless, the proposed combination fails to make up for the deficiencies in Shildkraut et al.

Accordingly, the Examiner is respectfully requested to withdraw the rejection of Claim 7.

Newly Added Claims

New Claims 27-29 have been added to further define the scope of the invention. Claims 27-29 are also allowable over the prior art of record for reasons similar to those set forth hereinabove with respect to the independent Claims 1, 8, 15, and 21.

Conclusion

In light of the foregoing, withdrawal of the rejections of record and allowance of this application are earnestly solicited.

Should the Examiner believe that a telephone conference with the undersigned would assist in resolving any issues pertaining to the allowability of the above-identified application, please contact the undersigned at the telephone number listed below. Please

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grant any required extensions of time and charge any fees due in connection with this request to deposit account no. 08-2025.

Respectfully submitted,
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